Chandka

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 546 OF 2007

Arun Pandurang Nikam ..Petitioner

versus

Smt. Asha Vithalrao Kame & Ors. ..Respondents

Mr. R. G. Ketkar i/b. Mr. R. S. Khandeparkar for the Petitioner.

CORAM : S. A. BOBDE, J.
DATE : 23RD OCTOBER, 2007.

P.C.

. This Civil Revision Application is preferred by the tenant against the concurrent findings of facts by both the courts below that he is causing nuisance and annoyance.

2. The respondents sued the petitioner on the ground of nuisance and annoyance. Apparently, the petitioner is in possession of two rooms along with bathroom and w.c. situate on the first floor of the suit property. Earlier, the respondents have filed a Civil Suit for possession on the ground of nuisance and annoyance. Respondents however were

unsuccessful. According to the respondents, thereafter the petitioner started harassing them in various ways. The water tap was kept open so that no water could flow from the tap of the respondents and that the petitioner started using the w.c. and water tap on the ground floor without using his own w.c. and bathroom. Apparently, the petitioner was using the ground floor bathroom from 7 a.m. for washing clothes, taking bath etc. as a result of which the respondents could not use the bathroom. Further, when the respondents requested the petitioner to avoid this, the petitioner's wife used to abuse the respondents and family members in filthy language. According to the respondents, the petitioner also started obstructing the use of the staircase by the plaintiff by allowing children to occupy the staircase. All in all according to the respondents, the petitioner causes nuisance and annoyance.

3. Both the courts below have carefully scrutinised the evidence on record and have come to the conclusion that the petitioner is causing nuisance. The courts below have relied on an independent evidence of persons, such as neighbours,

who have deposed to the existence of the nuisance. It is found by the courts below that the witnesses do not have enmity with the petitioner and have no motive to depose falsely.

4. Mr. Ketkar, learned counsel for the petitioner pointed out to the evidence which suggests that there are other taps in the building, and, therefore, the courts below ought not to have held that the petitioner was causing nuisance only on account of indiscriminate usage of one water tap. It is not possible to accept this contention in the present case. The petitioner has been found guilty of nuisance and causing annoyance not only by using one water tap but many other acts including threatening, assaulting and abusing the respondents and the finding of nuisance is not based only on the use of one water tap.

5. In the circumstances, there is no reason to interfere with the concurrent findings of both the courts below, the Petition is dismissed.

6. At this stage, Mr. Ketkar, learned counsel for the petitioner states that the petitioner wishes

to give an undertaking to vacate the premises within a period of one year. It will however be necessary to issue notice to the respondents on this question. Hence, issue notice to the respondents only on the question of the petitioner's willingness to furnish an undertaking, returnable on 21.11.2007.

7. The Appellate Court has restrained the respondents from executing the decree till 17.11.2007. Having regard to the notice issued by this court, there shall be an ad-interim stay restraining the respondents from executing the decree until further orders from this court.

(S.A. BOBDE, J.)